

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
FILE

In the Matter of)
)
Revision of Part 22 of the)
Commission's rules governing)
the Public Mobile Services)
)
NOTICE OF PROPOSED)
RULEMAKING)
)

CC Docket No. 92-115

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF PAGE AMERICA GROUP, INC.

Page America Group, Inc.¹ ("Page America") hereby submits comments concerning the above-captioned Notice of Proposed Rulemaking ("NPRM"). The following comments are intended to assist the Commission in assessing the impact of certain proposed rules on the paging industry, and to offer, where appropriate, suggested revisions or clarifications of those rules.

DISCUSSION

I. THE DEFINITION OF "SERVICE TO THE PUBLIC"

Several provisions of the proposed Part 22 refer to a requirement that licensees of constructed facilities provide "service to the public." See e.g., Proposed 47 C.F.R. §§ 22.142 (requirement to commence "service to the public" no later than date specified in authorization); 22.144 (automatic termination of authorization for failure to commence "service to the public"); 22.167 (finder's applications acceptable for licensed facilities not providing "service to the public"); and 22.317 (requiring surrender of

¹ Page America Group, Inc. is the parent corporation of the following holders of licenses issued under Part 22 of the Commission's rules: Page America of New York, Inc., Page America of Pennsylvania, Inc., Page America Communications of Illinois, Inc., and Page America of Indiana, Inc.

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authorization when "service to the public" not provided for ninety continuous days).

While authorizations have always been conditioned on providing service to the public, the Commission should take this opportunity to provide a clear definition of that term for purposes of Part 22. The definition should take into account the need to build up a paging system and customer base over an extended period of time. This will help reduce litigation under the above-cited rule sections.

Historically, meeting the service to the public requirement has meant operating a licensed facility on behalf of at least one customer. Under this criterion, however, a paging licensee could be seen to meet the requirement without ever attempting to attract additional customers, and thus prevent other paging operators from obtaining the channel and expanding service through serious marketing efforts. Under such an approach, an existing operator seeking to expand its system into the area in question might be forced to pay compensation for rights to the "single customer" facility. Similarly, paging operators could construct facilities in locations they themselves cannot incorporate into existing systems, but which they could serve with a single customer, thereby stifling expansion by competitors.

Conversely, because of the time needed to obtain licenses for and construct multiple facilities as part of a large paging system, coupled with the time needed to build up an appropriate customer base for such a system, paging licensees often cannot effectively make use of single transmitters during system build-up. In such situations, operators may be forced to begin token service on partially completed systems, or face losing licenses. Such actions are both inefficient and expensive, and do not promote the public interest in expanded paging service.

Page America proposes that the Commission adopt the following definition of service to the public:

A licensed station is considered to be providing service to the public for purposes of

this Part if it is fully constructed and operational in accordance with the authorization, and: (1) is being used to provide paging service to customers, or (2) will be used to provide such service as part of a multiple-facility paging system that is under development on the date specified on the station authorization for commencement of service. The permittee or licensee may evidence good faith efforts to develop such a multiple-facility system by filing applications for authorizations on the same channel as the station in question in neighboring locations, or initiating significant marketing efforts intended to establish the eventual customer base for the new system.

II. APPLICATIONS FOR FACILITY RELOCATIONS NOT AFFECTING THE EXISTING CONTOURS

Proposed Section 22.123 contains definitions of applications and amendments to applications deemed to be "major" under the proposed rules. In the paging service, the section defines an application to "relocate an existing fixed transmitter" as major. Proposed 47 C.F.R. § 22.123(e)(1)(i)(E). No exception is made, however, for relocations of transmitters that are within the composite service area contours of multiple-facility systems. Meanwhile, under proposed Section 22.165, paging licensees would be able to construct additional transmitters without obtaining prior Commission approval, as long as the service area and interference contours of the new channel were completely within those of the existing system.

Page America believes that there is little practical difference between relocating an existing transmitter and adding a new one, so long as the service area and predicted interference contour are unchanged. Relocation may be thought of as terminating service on one transmitter and adding a new one within the same system, both of which would be minor actions under the proposed rules. Accordingly, Page America recommends that Section 22.123 be revised to classify applications for paging transmitter relocations that do not affect service or interference contours as minor filings.

III. "FIRST COME, FIRST SERVED" AND THE ABILITY TO SETTLE DISPUTES

Proposed Section 22.509 provides that applications will be granted on a "first come, first served" basis, and that only mutually exclusive applications filed on the same day will be eligible for selection by lottery. Page America concurs fully in the Commission's effort to reduce the administrative burden and delay caused by the sixty-day mutual exclusivity "window" contained in Section 22.31 of the current rules. See 47 C.F.R. § 22.31(b)(2)(i). This change should benefit bona fide paging applicants who must often litigate or settle with so-called "strike" applicants who file after seeing an application on public notice.

Section 22.509 may also adversely affect ability of a paging carrier to expand an existing system, however, by denying it the opportunity to apply for a location for which another applicant has already filed. Under the current rules, a paging carrier could file after the "strike" application appeared on public notice, and attempt to obtain the grant through lottery or negotiation with the earlier applicant.² While such situations will occur less frequently under the "first come, first served" concept, expansion applicants will still need some means of preserving their ability to expand existing systems in the face of pre-emptive strike applications or abusive filers of petitions to deny.

Proposed Section 22.129 limits the amount of compensation to be paid for dismissal of a mutually exclusive application or petition to deny to "legitimate and prudent expenses." Proposed 47 C.F.R. § 22.129(a)(1). Page America recognizes the need to reduce incentives for strike applicants to file competing applications or petitions to deny against

² Another alternative under the current rules was to request a comparative hearing in lieu of lottery. See 47 C.F.R. § 22.33(c). This was intended "to allow the expansion applicant an opportunity to try to demonstrate that expansion of its existing system, . . . might better serve the public than authorization of a new station." NPRM at 9. As the Division points out, however, "no such hearings have been held." Id. It is likely that expansion applicants have been reluctant to request a hearing under this rule because of the expense and delay that would result.

expansion applicants. Page America also believes, however, that a new rule that restricts the ability to negotiate monetary settlements may be premature.

Page America cautions that limiting payment for voluntary dismissal of disputed applications may be a double-edged sword. Although the possibility of monetary settlement may promote abusive applications, such settlements also enable existing carriers to accomplish the system expansion necessary to improve service to paging customers. Further, the risk of speculative applications would probably be significantly reduced by collapsing the mutual exclusivity window to one day under proposed Section 22.509. Agreements to dismiss competitive applications or petitions provide a means for bona fide carriers to solve disputes at the bargaining table, without the need for costly litigation. Until the Commission is able to assess the impact of innovative proposals such as "first come, first served" and finder's applications on the number of strike applications, paging applicants should not be denied the ability to achieve settlement at any stage of the application process. Accordingly, Page America recommends that proposed Section 22.129 not be adopted at this time, and that the need for such a rule be determined after the impact of other proposed rules can be evaluated.

IV. NOTIFICATION OF FILL-IN TRANSMITTERS

Proposed Section 22.165 would enable licensees to construct and operate fill-in transmitters without notifying the Commission. While Page America is in favor of eliminating unnecessary filing requirements, it feels that it is essential that locations of all transmitters be available to frequency coordinators and future applicants. This information is especially crucial where service is discontinued at a facility on the perimeter of a composite service area, or where a licensee suffers interference from a transmitter within a neighboring licensee's service area. Therefore, Page America recommends that a

notification requirement be retained, although it could be met by filing a simple letter which contains the location, call sign and frequency.

V. PROCEEDINGS PURSUANT TO FINDER'S APPLICATIONS

Page America supports the proposed use of finder's applications as a means to prevent warehousing and allocate channels to operators who will use them to provide service. See Proposed 47 C.F.R. § 22.167. The proposed rule is not clear, however, about how such applications will be dealt with procedurally. The rule states that the Commission may conduct an investigation to determine the accuracy of the allegations of non-service contained in the finder's application. Id. at § 22.167(c). The nature and extent of such an investigation, or the circumstances under which it would be undertaken, are not discussed, however. Presumably, some proceeding would be appropriate in cases where the licensee disputed the allegations of the finder.

If the Commission's "investigation" under the proposed rule will provide a formal means for the licensee and the finder to present evidence and argument, then the rule should include a brief description of that procedure. On the other hand, if licensees are forced to file petitions to deny against every finder's application with which they disagree, they will probably seek to settle with the finder in order to avoid litigation. Thus, the finder's application rule may inadvertently create a new means for strike applicants to obtain money from licensees.

Page America recommends that the finder's application rule provide the specific steps to be taken by the Commission to determine the accuracy of the finder's allegations, unless the licensee concedes that those allegations are correct, and that the rule expressly provide that the license will not terminate until the Commission has taken those steps.

VI. CALL SIGN CONSOLIDATION

Page America applauds the move to simplify use of single call signs for large paging systems by eliminating the need to request a waiver before substituting system call signs for individual station call signs. See Proposed 47 C.F.R. § 22.313(c)(3). Page America now recommends that the Commission take the next logical step and assign system call signs to all stations within those systems, replacing individual station call signs in the Commission's files. While Page America recognizes that this proposal represents a daunting administrative task, it would eliminate confusion and simplify recordkeeping for the Commission, licensees, frequency coordinators and future applicants.

VII. MULTIPLE FREQUENCY TRANSMITTERS

Proposed Section 22.507 prohibits use of single transmitters to transmit on more than one frequency, in order to use spectrum more efficiently and to eliminate warehousing. Page America believes that this rule is unnecessary, and that it would eliminate a cost-effective means of building up new paging systems. Modern transmitters can switch between frequencies very rapidly, with only negligible down time, or time during which no signal is being transmitted. Moreover, paging carriers often use existing facilities to transmit new channels on a time-share basis, transferring part of the subscriber traffic to the new channels. As demand increases, additional transmitters are installed and the new channels are moved off of the shared transmitters, providing greater capacity. A requirement to install new transmitters before beginning operations on a new channel would be expensive, and would delay expanded service.

VIII. REPETITIOUS APPLICATIONS

The proposed rules provide that the Commission will not consider an

application on the same channel, in the same geographical area, by the same party whose authorization was automatically terminated for failure to commence service to the public. Proposed 47 C.F.R. § 22.121(d). The rule refers to proposed Section 22.144, which states that authorizations automatically terminate on the date commencement of service is required, if service has not commenced by that date.


Page America agrees with the rule against repetitious applications, but believes that it is intended only to bar subsequent applications where the applicant has allowed its authorization to lapse without taking action to provide service, and not where the applicant has voluntarily given up its authorization due to some change in circumstances. For example, if, in the interim between filing the application and construction, the terms of a proposed lease are materially changed, or the needs of a particular customer change, or the proposed site is no longer available, the applicant may be forced to surrender its authorization without ever having commenced service, and reapply. Page America recommends that proposed Section 22.121 contain language which exempts applicants who fail to construct for valid reasons, and who turn in their authorizations with an explanation of those reasons, from the one year ban on subsequent applications.

CONCLUSION

Page America feels that an update of Part 22 is long overdue, and heartily commends the Commission for undertaking this effort. Page America also appreciates this opportunity to provide industry input to the rulemaking process, and hopes its comments are useful.

Respectfully submitted,

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